

CIV533328
CMO
Case Management Order
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FILED
SAN MATEO COUNTY

MAR 01 2019

By 
CLERK OF THE SUPERIOR COURT
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

SIX4THREE LLC,

Plaintiff,

vs.

FACEBOOK, INC., et al.

Defendants.

Case No. CIV533328

CASE MANAGEMENT ORDER NO. 19

Assigned for All Purposes to
Hon. V. Raymond Swope, Dept. 23

Dept.: 23

Action Filed: April 10, 2015

On February 27, 2019, the Court set a briefing schedule on Defendant FACEBOOK, INC.'s ("Facebook") Ex Parte Application for an Order Enforcing the Stipulated Protective Order ("Facebook's Ex Parte" or "Ex Parte").

Having considered Facebook's Ex Parte, filed on February 27, 2018, and the respective responses of: (1) David S. Godkin, James Kruzer, and Birnbaum & Godkin, LLP ("Godkin Response"); (2) Gross & Klein, LLP and Stuart G. Gross ("Gross Response"); and (3) Theodore Kramer and Thomas Scaramellino (Kramer Response") and good cause appears.

IT IS HEREBY ORDERED as follows:

1. Facebook's Ex Parte is GRANTED, IN PART, AND DENIED, IN PART. As a threshold matter, the Court finds the Application is not a request for reconsideration. (See Kramer Response, p. 3:11-21.) The Ex Parte involves new disclosures of confidential or highly confidential information ("confidential information") subject to the Stipulated Protective Order, issued on October 25, 2016, published on the Internet outside of publication by the Digital, Culture, Media and Sport Committee of the House of Commons ("DCMS"). (Abrahamson Dec. ISO Ex Parte, Ex.

1 4, 5. See Ex Parte, p. 1:8-14.)

2 2. Pursuant to Paragraph 4 of the Stipulated Protective Order,¹ Plaintiff SIX4THREE,
3 LLC ("Six4Three"), through its counsel of record, shall produce fully executed Certifications of all
4 consultants or expert witnesses (Paragraph 4(e)), whether eventually retained or not, and all
5 witnesses (Paragraph 4(g)) **no later than March 5, 2019 at 5:00 p.m.** This shall include the persons
6 identified by Six4Three, including but not limited to, Thomas E. Scaramellino, who has repeatedly
7 stated his role as a law clerk was not as an employee of Birnbaum & Godkin, LLP, Paul Dehaye
8 (Godkin Dec. ISO Godkin Response, ¶ 2 ("Godkin Dec."), and an unidentified retained consultant
9 (*id.* at ¶ 4).

10 3. Mr. Godkin has referred to his communications with Mr. Dehaye and an unidentified
11 retained consultant and their actions pertaining to the Stipulated Protective Order and confidential
12 information. (Godkin Dec., ¶¶ 2 – 4.) Accordingly, Six4Three shall serve, **no later than March 5,**
13 **2019 at 5:00 p.m.,** the verified declarations of Mr. Dehaye and the unidentified retained consultant
14 where they shall state and address: (1) the date of receipt of a copy of the Stipulated Protective Order
15 and blank Certification; (2) the date of execution of the Certification pursuant to Paragraph 4; (3)
16 the date of receipt of confidential information; (4) compliance with the Stipulated Protective Order
17 by "not reveal[ing] or discuss[ing] confidential information to or with any person who is not entitled
18 to receive such information "pursuant to Paragraph 6 (see Godkin Dec., ¶ 5); (5) the date of
19 destruction of confidential information in their custody or control; and (6) the date of confirmation
20 of destruction of confidential information to Mr. Godkin (see *id.* at ¶¶ 3 , 4).

21 4. Mr. Godkin states that his firm "only provided third parties with Facebook's
22 confidential or highly confidential information in conformance with the Protective Order." (Godkin
23 Dec., p. 3:6-7.) The Court finds this statement ambiguous. Mr. Godkin shall serve a declaration
24 clarifying his or any person's, whether employed, consulted, retained, volunteered, affiliated or
25 associated with Birnbaum & Godkin, LLP, compliance with Paragraph 6 by "not reveal[ing] or
26 discuss[ing] confidential information to or with any person who is not entitled to receive such
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28 ¹ All further citations to "Paragraph" refer to the paragraphs of the Stipulated Protective Order.

1 information" **no later than March 5, 2019 at 5:00 p.m.**

2 5. The Court finds that the recent publication of confidential information made outside
3 of DCMS publication outweighs Mr. Kramer's privacy interests. Further inquiry into what
4 confidential information Mr. Kramer shared with the DCMS compared to what has been published
5 outside of the DCMS is necessary to preserve the sanctity of the Stipulated Protective Order.

6 Accordingly, Stroz Friedberg, LLC, ("Stroz Friedberg") shall conduct a search on Mr.
7 Kramer's computer, currently in its possession, for any and all logs and records, not limited to
8 systems logs, that will identify any files accessed, opened, uploaded, downloaded, transferred,
9 shared, saved, modified, and/or deleted, for the period from November 19, 2108 at 12:00:00 A.M.
10 (GMT) to November 23, 2018 at 11:59:59 P.M (EST). **Stroz Friedberg shall not open any files**
11 **on Mr. Kramer's computer absent further of the Court.**

12 This search is narrowly tailored to the dates from when Mr. Kramer traveled to London and
13 was in communication with DCMS to the date of his stated deletion of confidential information in
14 New York. (See Kramer Dec ISO Six4Three Brief, filed Nov. 26, 2018, ¶¶ 11 – 24.) The Court
15 acknowledges Mr. Kramer's objection to Stroz Friedberg because of their retention by Facebook.
16 However, Kramer has failed to demonstrate that Stroz Friedberg has not complied with the Court's
17 prior orders.

18 Time is of the essence, given the continuing disclosure of confidential information outside
19 of DCMS publication. Moreover, as previously represented, Six4Three is bereft of funds to retain
20 a joint forensic examiner for the purposes of this inquiry. Thus, any forensic examiner would solely
21 be funded by Facebook.

22 Stroz Friedberg shall serve on counsel of record a written summary and attach the logs and
23 records promptly upon completion. The Court considers this report confidential information under
24 the protective order and should be treated as such.

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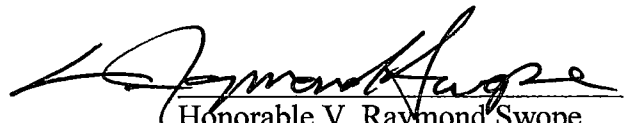
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1 6. Facebook's Motion to Open Discovery shall remain on March 15, 2018 at 10:00
2 a.m.

3 7. The Court, *sua sponte*, continues the Case Management Conference from March 7,
4 2019 to March 15, 2019 at 10:00 a.m.

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6 IT IS SO ORDERED.

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8 DATED: March 1, 2019

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11 Honorable V. Raymond Swope
12 Judge of the Superior Court
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